



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

CECW-LRD/MVD

FEB 08 2016

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1039(c) of the Water Resources Reform and Development Act of 2014, Public Law 113-121 - Invasive Species, Prevention, Great Lakes and Mississippi River Basin

1. References.

a. Section 1039(c) of Water Resources Reform and Development Act of 2014 (WRRDA 2014), Public Law 113-121.

b. House Report 113-449 (May 15, 2014) (conference report statement of managers accompanying WRRDA 2014).

c. Explanatory statement, Consolidated Appropriations Act, 2016, P.L. 114-113 (Congressional Record, December 17, 2015, at H10056).

2. Section 1039(c)(1) of WRRDA 2014 authorizes the Secretary to implement measures recommended in the efficacy study directed by Section 3061(b)(1)(D) of the Water Resources Development Act of 2007, or in interim reports, with any modifications or any emergency measures the Secretary determines to be appropriate to prevent aquatic nuisance species from dispersing into the Great Lakes by any hydrologic connection between the Great Lakes and the Mississippi Basin. Section 1039(c)(2) directs the Secretary to notify select Senate and House Committees of any emergency actions taken pursuant to this authority. A copy of Section 1039(c) of WRRDA 2014 is enclosed.

3. This authority will not be used to implement alternatives proposed under the GLMRIS study authority, consistent with the language regarding Section 1039(c) set forth in the Conference report accompanying WRRDA 2014 which states that: "This section does not authorize any activities proposed under the 'Great Lakes and Mississippi River Interbasin Study' (GLMRIS) authorized by Section 3061(d) of the Water Resources Development Act of 2007, Public Law 110-114." H. Rept. 113-449 (May 15, 2014). The term "activities proposed" is interpreted as including any complete alternative evaluated under the GLMRIS study authority. The fact that a particular technology was evaluated as a subcomponent of an alternative under the GLMRIS study authority does not preclude its implementation as a measure under this authority.

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4. The district will seek the Assistant Secretary of the Army for Civil Works (ASA(CW)) approval prior to implementation of any measure recommended under the efficacy study, as well as for any modification not previously recommended under the efficacy study. The term "modification" is defined as any modification to a measure previously recommended under the efficacy study. Emergency measures do not need to be measures or modifications to measures previously recommended under the efficacy study in order to be implemented under this authority.

5. Any efficacy study or study of a modification to a prior efficacy study recommendation must be consistent with the study process utilized for the Efficacy Study Interim Reports I through IV, relevant USACE planning guidance, and the Implementation Guidance for Section 3061 of the Water Resources Development Act of 2007 (WRDA 2007) - Chicago Sanitary and Ship Canal (CSSC) Dispersal Barriers Project, Illinois dated 12 March 2009. Projects with potential federal construction costs in excess of \$5 million must be coordinated with HQUSACE prior to initiating the study.

6. Implementation of recommended measures under the efficacy study, modifications, or emergency measures under this authority includes all of the activities normally included in the Preconstruction Engineering and Design (PED) and construction phases of specifically authorized projects. Implementation of measures related to optimizing the effectiveness of the electric dispersal barriers on the CSSC by operating and maintaining them as a system will be at full federal expense, consistent with Section 3061(b)(1)(C) of WRDA 2007. Implementation of measures not related to such optimization of the barriers' effectiveness might require the participation of a non-federal sponsor including execution of a project partnership agreement. The district will coordinate requirements for participation of a non-federal sponsor relating to the implementation of measures not related to the efficacy of the barriers with staff at the Great Lakes and Ohio River Division or Mississippi Valley Division as appropriate, as well as HQUSACE as early as possible during the development of the feasibility report and integrated NEPA documentation.

7. Consistent with direction provided by the explanatory statement regarding the Consolidated Appropriations Act, 2016, USACE shall develop formal emergency procedures under authorities provided under Section 1039, including rapid response protocols, monitoring, and other countermeasures, that are appropriate to prevent Asian Carp from passing beyond the Brandon Road Lock and Dam while still complying with the Lock's existing authorized purposes and the Rivers and Harbors Act of 1899 (33 U.S.C. 401 et seq.). These procedures shall be established in coordination with the U.S. Fish and Wildlife Service and in consultation with the Asian Carp Regional Coordinating Committee.

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8. Emergency measures include measures otherwise eligible for study or implementation under this guidance that also will address an imminent risk to life, safety, property, or the environment. Should the district commander identify an emergency, the district will prepare a Declaration of Imminent Threat documenting an identified risk of occurrence in a specified place in the near future of a loss of life, damage to health or property, or of substantial economic or environmental harm, as well as an integrated environmental compliance analysis documenting the expected impacts of the measures that are recommended and, their costs, time frame, and any other pertinent information. Upon completion of an appropriate level of district and Agency Quality Control, the report will be provided (in electronic form to expedite processing with a hard copy following) to LRD or MVD, HQUSACE, and the ASA(CW) for approval. Compliance with all environmental laws must be completed before any emergency actions are taken, although NEPA analyses may be conducted in accordance with current guidance at 40 C.F.R. § 1506.11. Coordination with federal resource agencies, state and local governments and interested stakeholders is a critical function of emergency planning, and as such should be given a high priority during the planning and implementation phases of an emergency action. Upon receipt of the ASA(CW)'s approval, and required funds, the district commander will implement the emergency measure or measures. Emergency actions can only be taken to address an identified imminent threat and the actions will cease when the imminent threat has been addressed. Districts shall take appropriate care to ensure that emergency measures do not improperly interfere with ongoing obligations to operate projects in accordance with their authorized purposes to the maximum extent practicable.

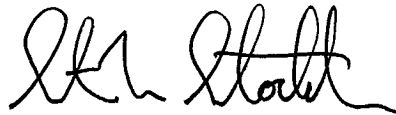
9. Funds for implementation of any measures described in Section 1039(c)(1) have not been specifically appropriated. Recommended measures that are related to the Barriers System are eligible to use applicable Barriers System appropriations. Funding for measures will depend upon the nature of the measure, its relation to an existing programmed USACE project, program, or activity, and whether the measure is warranted under the USACE emergency authorities. For measures warranted to be undertaken under the USACE emergency authorities, funding may be available under additional sources, subject to approval by appropriate decision-makers. Districts should coordinate with USACE to confirm the need and to obtain necessary approvals of funding for any emergency related action.

10. Section 1039(c)(2) of the WRRDA 2014 directs the Secretary to notify the Senate Committee on Environment and Public Works, the Senate Committee on Appropriations, the House of Representatives Committee on Transportation and Infrastructure and the House of Representatives Committee on Appropriations of any emergency action taken pursuant to subsection 1039(c)(1), WRRDA 2014.

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Notifications of any emergency actions to the Senate and House Committees should be initiated by the appropriate offices in LRD or MVD through HQUSACE, to the Office of the ASA(CW). The ASA(CW) shall provide the notification to the Committees in an expedited fashion that may include email and/or call followed by a formal letter.

11. Point of contact is Ms. Janice Rasgus, who can be reached at 202-761-7674.



STEVEN L. STOCKTON, P.E.
Director of Civil Works

Encl

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